

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Greg Finch	Team: Squad #14	CCRB Case #: 201602686	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 03/23/2016 5:58 AM	Location of Incident: § 87(2)(b)	Precinct: 25	18 Mo. SOL 9/23/2017	EO SOL 9/23/2017	
Date/Time CV Reported Wed, 03/23/2016 10:00 AM	CV Reported At: IAB	How CV Reported: In-person	Date/Time Received at CCRB Wed, 03/30/2016 10:58 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Felix Garcia	04045	906303	WARRSEC
2. SDS Michael Powers	05347	900580	WARRSEC

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Jason Maggio	07681	906689	WARRSEC

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Felix Garcia	Abuse: Detective Felix Garcia threatened to damage § 87(2)(b)'s property.	§ 87(2)(b)
B.DT3 Felix Garcia	Abuse: Detective Felix Garcia entered and searched § 87(2)(b) in Manhattan.	§ 87(2)(b)
C.SDS Michael Powers	Abuse: Sergeant Michael Powers entered and searched § 87(2)(b) in Manhattan.	§ 87(2)(b)
D.DT3 Felix Garcia	Abuse: Detective Felix Garcia refused to provide his name and shield number to § 87(2)(b)	§ 87(2)(b)

Case Summary

On March 23, 2016, § 87(2)(b) and Sonya § 87(2)(b) filed the following complaint at IAB Command Center generating log #2016-10601. The CCRB received the case on March 30, 2016.

On March 23, 2016, at approximately 5:56 a.m. Detective Felix Garcia, Sergeant Michael Powers and Detective Jason Maggio arrived at § 87(2)(b) in Manhattan in relation to the Det. Garcia's investigation of § 87(2)(b) (BR 01; BR 02). Through his investigation Det. Garcia determined that § 87(2)(b) sister, § 87(2)(b) lived in the building. Det. Maggio stood outside § 87(2)(b)'s apartment window and Det. Garcia and Sgt. Powers entered the building. Det. Garcia spoke with security guard § 87(2)(b) § 87(2)(b) and determined that § 87(2)(b) lived in § 87(2)(b). § 87(2)(b) was awoken by Det. Garcia knocking on her apartment door. § 87(2)(b)'s boyfriend § 87(2)(b) and daughter § 87(2)(b) were also present in the apartment. § 87(2)(b) answered the door and had a conversation with Det. Garcia through the closed door. § 87(2)(b) called her mother, § 87(2)(b) on her cell phone. Det. Garcia allegedly threatened to break the door down (**Allegation A**). § 87(2)(b) unlocked the door and Det. Garcia and Sgt. Powers entered and allegedly searched the apartment (**Allegations B and C**). § 87(2)(b) requested Det. Garcia's name and shield number, and Det. Garcia allegedly did not respond to § 87(2)(b)'s request (**Allegation D**). Det. Maggio later entered § 87(2)(b)'s apartment. Det. Garcia checked § 87(2)(b)'s identity and determined that § 87(2)(b) was not in the apartment, but obtained no information about § 87(2)(b) whereabouts. § 87(2)(b) requested that officers leave her apartment. Det. Garcia, Sgt. Powers and Det. Maggio left § 87(2)(b)'s apartment. Before exiting the building, Det. Garcia had a conversation with § 87(2)(b) in the building hallway about § 87(2)(b) (BR 03).

No video footage was available for this incident.

§ 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) and § 87(2)(b) declined the option of mediation.
- As of May 9, 2016, there has been no Notice of Claim filed with the NYC Comptroller's office regarding this incident (BR 04).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]

Civilian and Officer CCRB Histories

- § 87(2)(b)
[REDACTED]
[REDACTED]
- § 87(2)(b)
[REDACTED]
[REDACTED]
- Det. Garcia has been a member of the NYPD for 22 years and has 3 prior complaints with 13 allegations (see officer history). He has seven previous force allegations dating back to

1997, three of which were closed as substantiated, two closed as unsubstantiated, one closed as unfounded and one closed as exonerated. § 87(2)(g)

- In case #9703186, the Board substantiated three force allegations, one abuse allegation and one discourtesy allegation, and recommended charges. CTS did not contain the NYPD disposition.
- Case #201507115 is still open and is on DA Hold.
- Sgt. Powers has been a member of the NYPD for 24 years and has one prior complaint with one “Abuse – Other” allegation (see officer history). The allegation was closed as unfounded § 87(2)(g)

Potential Issues

- No video footage was available for this incident as the camera surveillance system at § 87(2)(b) was not functioning on this date (BR 09).

Findings and Recommendations

Allegations not pleaded

- § 87(2)(g)
- **Abuse of Authority - Entry:** Det. Maggio was not present for the initial entry into § 87(2)(b)'s apartment and only entered after Det. Garcia and Sgt. Powers were already inside (BR 12). § 87(2)(g)

Allegation A – Abuse of Authority: Detective Felix Garcia threatened to damage § 87(2)(b)'s property.

Allegation B – Abuse of Authority: Detective Felix Garcia entered and searched § 87(2)(b)'s apartment.

Allegation C – Abuse of Authority: Sergeant Michael Powers entered and searched § 87(2)(b)'s apartment.

It is undisputed that Det. Garcia and Sgt. Powers entered § 87(2)(b)'s apartment.

According to § 87(2)(b) she woke up to a flashlight pointed through her apartment bedroom window and Det. Garcia loudly banging on her apartment door (BR 13). § 87(2)(b) walked to her front door and said, “Who is it?” Det. Garcia said, “Police, open up the door.” § 87(2)(b) grabbed her phone and called her mother. § 87(2)(b) § 87(2)(b) asked through the apartment door, “Do you have a warrant?” Det. Garcia allegedly replied, “We don’t have to show you a warrant, or else we’ll kick the door down,” and “We have a search warrant for this apartment.” § 87(2)(b) told § 87(2)(b) to open the door, and she unlocked the door and opened it two inches. § 87(2)(b) positioned her body behind the door so that officers couldn’t enter, and placed her head in the opening between the door and doorframe. Det. Garcia allegedly pushed the door fully open and brushed past § 87(2)(b) § 87(2)(b) moved out of the way to avoid contact with the opening door. § 87(2)(b) allegedly observed Sgt. Powers opening and closing kitchen cabinets, entering the bedroom and looking under the bed, and entering the bathroom and pulling back the shower curtain. § 87(2)(b) asked, “Do you have a search warrant for this apartment or for me?” Det. Garcia allegedly replied, “No, we have a search warrant for § 87(2)(b) Det. Garcia showed her a photoless warrant with § 87(2)(b)'s name handwritten in black ink on the paper above the printed writing. § 87(2)(b) told Det. Garcia that neither § 87(2)(b) nor § 87(2)(b) lived in the apartment. After the entry,

security guard § 87(2)(b) told § 87(2)(b) that Det. Garcia had entered the building and told him that officers had a warrant. § 87(2)(b) said that Det. Garcia then looked through the logbook, stopped on § 87(2)(b)'s name and wrote her name on a paper before knocking on § 87(2)(b)'s apartment. At no point did § 87(2)(b) give verbal consent for any officer to enter.

According to § 87(2)(b) she received a call from her daughter § 87(2)(b) who told her the police were there (BR 14). § 87(2)(b) heard § 87(2)(b) tell officers that § 87(2)(b) and § 87(2)(b) didn't live at the apartment. § 87(2)(b) heard § 87(2)(b) request to see a warrant. § 87(2)(b) heard Det. Garcia say, in response to § 87(2)(b)'s warrant request, "Open up the door before we break down the door here."

According to the security guard § 87(2)(b) (BR 15), Det. Garcia entered the building followed by Sgt. Powers and Det. Maggio. Det. Garcia showed § 87(2)(b) a badge and allegedly displayed to § 87(2)(b) a warrant for § 87(2)(b) and another warrant for a black male. Det. Garcia asked for the building sign-in sheet, looked through it, and then wrote on the paper with § 87(2)(b)'s photo. Det. Garcia approached and knocked on the door of § 87(2)(b). § 87(2)(b) had a clear view of the apartment door. Det. Garcia said that the police had a warrant and needed to check inside the apartment. § 87(2)(b) did not want to let the officers in. About one to two minutes into the conversation, § 87(2)(b) opened the door one to two inches. Det. Garcia raised his voice at § 87(2)(b) and said that the officers had the right to search the apartment. Det. Garcia told § 87(2)(b) "Make this easy, if you don't make this easy we can do it another way." About three to four minutes after officers began speaking with her, § 87(2)(b) stepped out of the way of the door. Det. Garcia allegedly entered § 87(2)(b)'s apartment followed by Sgt. Powers and Det. Maggio. § 87(2)(b) did not see officers touch § 87(2)(b). § 87(2)(b) push the door into § 87(2)(b) or threaten to break the door down. § 87(2)(b) raised her voice at officers before they entered and again when they were searching her apartment. § 87(2)(b) was crying. Det. Garcia told § 87(2)(b) officers were looking for her brother. § 87(2)(b) moved closer to the apartment door to get a better view of what was happening. He had a partial view inside and observed Sgt. Powers search § 87(2)(b)'s bathroom by pulling the shower curtain back. § 87(2)(b) said that Det. Garcia showed him the name "§ 87(2)(b)" handwritten on a piece of paper as officers exited the building (BR 03). § 87(2)(b) stated that § 87(2)(b)'s apartment window was barred and did not allow for entry or exit.

According to § 87(2)(b) he was with § 87(2)(b) and her daughter § 87(2)(b) when he heard a loud banging on the apartment door and unfamiliar noises and voices at the door and bedroom window (BR 16). § 87(2)(b) generally corroborated § 87(2)(b)'s account of the entry, including that Det. Garcia identified them as officers and said they had a warrant, that § 87(2)(b) refused to open the door, and that Det. Garcia threatened to break the door down. § 87(2)(b) then saw § 87(2)(b) open the door and Det. Garcia enter followed by Sgt. Powers and Det. Maggio. Sgt. Powers allegedly entered the bathroom and moved the shower curtain. Det. Garcia showed § 87(2)(b) two warrants with § 87(2)(b) and § 87(2)(b) on them.

According to Det. Garcia, he was investigating § 87(2)(b) who was wanted for a § 87(2)(e) § 87(2)(b) (BR 17). Through Det. Garcia's investigation, he determined that § 87(2)(b) § 87(2)(b) (BR 01). When asked what led him to believe that § 87(2)(b) was at the location, Det. Garcia responded, "Through my computer investigation," and, "We use a lot of databases, I don't know if it was Accurate or Lexis, one of those." When asked if he was present at the location for an i-Card or for a warrant, Det. Garcia said, "For the i-Card – during my investigation I found out there were warrants for the building." When asked by his legal representative, "At that apartment?" Det. Garcia responded, "No. You'll have sometimes, people move and the prior tenant probably has the warrant, stuff like that." When asked which warrant he used in regards to this entry, Det. Garcia said, "It was probably a guy by the name § 87(2)(b) and another one was § 87(2)(b) Det. Garcia

said § 87(2)(b) was a prior tenant for § 87(2)(b) and his warrant lists the building but § 87(2)(b) (BR 11). Det. Garcia said the i-Card related to § 87(2)(b) listed the address § 87(2)(b) (BR 02). Det. Garcia said he also possessed § 87(2)(b), which also listed § 87(2)(b) (BR 10). Det. Garcia had been to § 87(2)(b) multiple times, and said it was the residence of § 87(2)(b) aunt. When asked what led Det. Garcia to believe § 87(2)(b) was § 87(2)(b) residence, Det. Garcia said, "Because his sister lived there." When asked if he had any other reason to believe that § 87(2)(b) was at the location besides the fact that his sister lived there, Det. Garcia said, "No." Det. Garcia never found anything else in his database searches connecting § 87(2)(b) to § 87(2)(b). Det. Garcia said that after the incident, a felony warrant was issued for § 87(2)(b) (BR 18).

At § 87(2)(b) Det. Garcia showed a photo of § 87(2)(b) to § 87(2)(b) who "could not say yes or no if the guy lived in that location." § 87(2)(b) looked through the building roster and confirmed that § 87(2)(b) lived in § 87(2)(b). Det. Garcia first said he did not look through the roster, but then said that both he and § 87(2)(b) looked in the logbook to confirm § 87(2)(b) was living there. Det. Garcia did not recall if he wrote § 87(2)(b)'s name on either the i-Card or the warrant.

Det. Garcia recalled that all three officers approached the front door of § 87(2)(b). Det. Garcia knocked and § 87(2)(b) came to the closed door. § 87(2)(b) refused to open the door because she did not believe they were police officers. Det. Maggio went to the apartment window on the outside of the building, used a flashlight and noticed a person on a bed. Det. Garcia could not recall how Det. Maggio relayed this information. Det. Maggio then walked back inside the building to rejoin Det. Garcia and Sgt. Powers outside the § 87(2)(b) door. Det. Garcia was able to show his shield and ID through the peephole. Det. Garcia did not recall if § 87(2)(b) requested his name and shield number through the peephole. Det. Garcia estimated that he spoke with § 87(2)(b) for 1-2 minutes before she opened the door. § 87(2)(b) independently invited the officers inside. No officer threatened to break the door down. § 87(2)(b) did not tell officers not to enter or physically try to stop officers from entering. Det. Garcia and Sgt. Powers entered § 87(2)(b)'s apartment. Det. Garcia did a "visual search." Det. Garcia told § 87(2)(b) he was conducting an investigation in regards to § 87(2)(b). § 87(2)(b) had told him, "Come in, what's this about." Det. Garcia told § 87(2)(b) that § 87(2)(b) committed a shooting in the 32nd Precinct. § 87(2)(b) then got on the phone to speak with her mother. When asked if § 87(2)(b) requested to see a warrant, Det. Garcia said, "Yes, I showed — I told her we did it for the i-Card for her brother." Det. Garcia interviewed § 87(2)(b) and she did not know § 87(2)(b) whereabouts. In regards to § 87(2)(b) Det. Garcia said, "I don't know if I mentioned a name to her, to make sure she knows that person or not." Later in the interview, Det. Garcia said he mentioned § 87(2)(b) to § 87(2)(b) and she said she did not know him.

According to Sgt. Powers, he arrived with Det. Garcia and Det. Maggio (BR 19). Det. Garcia was the investigator of the case of § 87(2)(b) § 87(2)(b) who had an i-Card for a non-fatal shooting. Sgt. Powers had accompanied Det. Garcia to other locations prior to this incident in regards to this i-Card. Sgt. Powers stated that Det. Garcia also had a warrant for a separate individual with § 87(2)(b) listed but no apartment specified. When asked if officers were searching for § 87(2)(b) at § 87(2)(b) on this date, Sgt. Powers said, "Well we were looking for him also." Beyond § 87(2)(b)'s apartment and the following incident, no officers travelled to any other apartments at § 87(2)(b) or made any other attempts to search for § 87(2)(b) on this date. Sgt. Powers did not know exactly how Det. Garcia obtained the address for § 87(2)(b)'s building but believed it was through computer searches. When asked of the relevance of § 87(2)(b) in regards to § 87(2)(b) § 87(2)(b) Sgt. Powers said, "We believed that the sister of our subject that we're looking for lived there. Sgt. Powers did not have any knowledge of § 87(2)(b) residing in § 87(2)(b). When asked if he believed that § 87(2)(b)

§ 87(2)(b) would be in the apartment when officers arrived that day, Sgt. Powers said, “We didn’t know if he would be there or not, no.”

Sgt. Powers said that upon arrival, Det. Garcia interviewed § 87(2)(b). From this, the officers learned that the building was a shelter, that the security guard had never seen § 87(2)(b) and that § 87(2)(b) lived in § 87(2)(b). The officers came to believe that § 87(2)(b) did not live in the building after this conversation with the security guard. Sgt. Powers did not remember if Det. Garcia showed § 87(2)(b) a photograph of § 87(2)(b). Sgt. Powers said that Det. Garcia went through the logbook before approaching § 87(2)(b)’s apartment to see if there were any visitors. Sgt. Powers did not know if Det. Garcia wrote any names down. Det. Garcia and Det. Maggio approached the door of § 87(2)(b)’s apartment. No officers stood outside the building. Det. Garcia knocked on the apartment door, and § 87(2)(b) answered. Det. Garcia said, “Do you mind if we come talk to you inside?” § 87(2)(b) replied, “Sure.” Sgt. Powers said it was a quick conversation and § 87(2)(b) invited them in. Sgt. Powers said that Det. Garcia explained that officers had a warrant for the building, were looking for § 87(2)(b) and § 87(2)(b) and asked if they could enter § 87(2)(b)’s apartment. § 87(2)(b) did not raise her voice and neither officer yelled at § 87(2)(b). § 87(2)(b) did not tell officers not to enter the apartment or physically prevent their entry. When asked if § 87(2)(b) was at any point confused about the officers being police officers, Sgt. Powers said, “I don’t know if she was confused.” Sgt. Powers did not remember if Det. Garcia placed his shield in front of the peephole. Det. Garcia did not tell § 87(2)(b) that he had a warrant for the apartment. Det. Garcia did not threaten to break the door down.

Sgt. Powers said that § 87(2)(b) invited the officers in. He did not know if she opened it fully or blocked the door’s path. Det. Garcia and Det. Maggio entered the apartment while Sgt. Powers stood in the doorway. Det. Garcia and Det. Maggio did not search the apartment, open cabinets or pull back the shower curtain. At no point did § 87(2)(b) request any warrant or any other information from officers. Sgt. Powers did not remember if Det. Garcia showed the i-Card to § 87(2)(b) but he did explain that he was looking for § 87(2)(b).

Det. Maggio confirmed his presence at the location but did not recall many details about the investigation or if the officers had a related warrant. Det. Maggio was assigned to watch the outside apartment window, which was on the first floor facing the street. Det. Maggio stayed at the window until he received a communication to enter the building. Det. Garcia and Sgt. Powers were already inside the apartment. Det. Maggio did not observe the entry or whether Det. Garcia threatened to break the door down. Det. Maggio did not search the apartment.

§ 87(2)(e)

§ 87(2)(b) An arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within. *Payton v. New York*, 445 U.S. 573 (1980) (BR 20). An officer possessing an arrest warrant may only enter the suspect’s residence if he or she has a reasonable belief that the suspect is present at the time of the warrant’s execution. Proof that a suspect resides at a particular premises is insufficient to satisfy the separate requirement that officers must have a reason to believe the suspect is within those premises at the time of entry. The officer must have some modicum of concrete, believable information of recent vintage, pointing to the suspect’s presence at the time his or her home is searched. *People v. Cabral*, 147 Misc.2d 1000 (Sup. Ct. Kings Co., 1990) (BR 23). A law enforcement officer cannot legally search, without a search warrant, for the subject of an arrest warrant in the home of a third party. *People v. Smith*, 806 N.Y.S. 2d 447 (2005) (BR 26). It has long been determined that officers are allowed to conduct a warrantless entry into a premise, provided there is probable cause, only if exigent circumstances exist, or consent is given. *People v. McBride*, 14 N.Y.3d 440 (2010) (BR 22). Consent is voluntary when it is a true act of will, an unequivocal product of an essentially free and unconstrained choice that voluntariness is

incompatible with official coercion, actual or implicit, overt or subtle. *People v. Gonzalez*, 39 N.Y.2d 122 (1976) (BR 24). Without a search warrant, officers may only permissibly enter the dwelling of a third party in order to execute an arrest warrant either with the consent of the authorized party or under exigent circumstances. *People v. Fakoya*, 901 N.Y.S.2d 909, Sup. Ct., Kings Cty. 2009 (BR 27). Factors used to determine whether exigent circumstances exist include the violent nature of the offense, whether the suspect is reasonably believed to be armed, a clear showing of probable cause, a strong likelihood to believe the suspect is in the premises, the likelihood that the suspect will not escape if not swiftly apprehended, and the peaceful circumstances of the entry.

§ 87(2)(b), § 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

§ 87(2)(b), § 87(2)(g)

Allegation D – Abuse of Authority: Detective Felix Garcia refused to provide his name and shield number to § 87(2)(b)

§ 87(2)(b) alleged that as officers exited her apartment, she asked Det. Garcia for his name and badge number, and he allegedly did not provide them (BR 13). According to § 87(2)(b) she instructed § 87(2)(b) over the phone, “Ask them for a card, ask them for their names and badges” (BR 14). § 87(2)(b) then requested the name of Det. Garcia. Det. Garcia allegedly said, “It doesn’t matter, all we need to know is where your brother is” and, “You want to ask us all these questions and you’re not even supposed to have company here.” § 87(2)(b) did not know if § 87(2)(b) requested Det. Garcia’s name or shield number or whether Det. Garcia provided them (BR 15). According to § 87(2)(b) § 87(2)(b) asked Det. Garcia, “Can I have your name? Can you leave a card?” (BR 16) Det. Garcia allegedly said, “You on the phone with your Mom? What’s your Mom’s name?” and did not provide his name or card to § 87(2)(b).

When asked if § 87(2)(b) requested his name or card, Det. Garcia said, “No, I don’t think so, she was too irate because she was on the phone with her mother” (BR 17) Det. Garcia said he gave his card to § 87(2)(b) “because he was the more stable to talk to, I don’t know if I gave him my card, or gave it to the security guard.” Sgt. Powers said that § 87(2)(b) did not request documentation from Det. Garcia at any point (BR 19). When asked if § 87(2)(b) asked for either his or Det. Garcia’s name or shield number, Det. Maggio said, “She never asked of me, I’m not aware if she had that conversation with Garcia or anybody else there” (BR 12). According to Det. Maggio, no officer made any statement refusing to provide their name or shield

§ 87(2)(g)

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date